



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

September 28, 2005

MEMORANDUM

TO: Lawrence H. Norton  
General Counsel

THROUGH: James A. Pehrkon  
Staff Director

Robert J. Costa  
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FROM: Joseph F. Stoltz  
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Audit Division

Wanda J. Thomas  
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SUBJECT: Missouri Democratic State Committee (A01-33) – Referral Matter

On September 7, 2005, the Commission approved the final audit report on the Missouri Democratic State Committee. The final audit report includes matters that meet the criteria for referral to your office: Finding 2-Receipt of Contributions That Exceed Limits, Finding 3-Apparent Excessive Contributions – Staff Advances, and Finding 5-Recordkeeping for Disbursements (see attachments.)

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Bill Antosz or Wanda Thomas at 694-1200.

Attachments: Finding 2-Receipt of Contributions That Exceed Limits  
Finding 3-Apparent Excessive Contribution – Staff Advances  
Finding 5-Recordkeeping for Disbursements

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## **Finding 2. Receipt of Contributions That Exceed Limits**

### **Summary**

The Audit staff identified 32 contributions from individuals and political committees that exceed the contribution limits by \$188,295. In addition, we identified three anonymous cash contributions that exceed the limits by \$5,675. MDSC deposited these contributions into the federal account and purportedly transferred the excessive portions into the non-federal account. Records were not provided that would allow the Audit staff to identify which contributions were transferred. The Audit staff recommended that MDSC demonstrate that these contributions were not excessive, were timely transferred to the non-federal account, or refund the excessive amounts to the contributors. In its response, MDSC provided a schedule indicating that many of the excessive contributions noted above had been "netted out" against transfers made from the non-federal account for shared activity. Although MDSC believes that this process was "the functional equivalent of an actual transfer," the practice does not comply with the Commission's regulations. Furthermore, the Audit staff determined that there are remaining excessive contributions totaling \$38,770 (\$33,770 individual contributions and a \$5,000 political committee contribution), as well as the excessive anonymous cash contributions of \$5,675. MDSC disclosed individual excessive contributions of \$33,500 on Schedules D (Debts and Obligations) of the amended reports, along with the excessive anonymous cash contributions noted above.

### **Legal Standard**

**Party Committee Limits.** A party committee may not receive more than a total of \$5,000 per year from any one contributor. 2 U.S.C. §441a(a)(1)(C), (2)(C) and (f); 11 CFR §§110.1(a) and (d) and 110.9(a).

**Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
  - o Keep enough money in the account to cover all potential refunds;
  - o Keep a written record explaining why the contribution may be illegal;
  - o Include this explanation on schedule A if the contribution has to be itemized before its legality is established;
  - o Seek a reattribution of the excessive portion, following the instructions provided in Commission regulations (see below for explanations of reattribution and redesignation); and
  - o If the committee does not receive a proper reattribution within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

**Revised Regulations Applied.** The Commission adopted new regulations that allow committees greater latitude to designate contributions to different elections and to

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reattribute contributions to joint account holders and has decided to apply these regulations to current matters. Although the new regulations were not in effect for most of the audit period, the Audit staff evaluated the excessive contributions discussed below using the new regulations.

**Anonymous Contribution of Currency.** A candidate or committee that receives an anonymous contribution of currency that exceeds \$50 must promptly spend the excess amount for any lawful purpose unrelated to federal election activity. 11 CFR §110.4(c)(3).

### **Facts and Analysis**

A review of the MDSC's receipt records identified 32 contributions from political action committees (PACs) and individuals that appeared to exceed the contribution limits by \$188,295. Seven of the excessive contributions totaling \$55,000 were from PACs. Twenty-five excessive contributions totaling \$133,295 were from individuals.<sup>1</sup> In addition, there were three excessive cash contributions totaling \$5,675.

These contributions were deposited into the federal account and, according to the MDSC representatives, the excessive portions of the contributions were subsequently transferred to the non-federal account. It was MDSC's practice to only report the allowable portion of contributions received. Any amount received over the allowable limit was not disclosed, and when any excessive amount was transferred to the non-federal account, these transfers were also not reported. This practice contributed to the misstatement of financial activity for the audit period. See Finding 1.

MDSC did not maintain records to associate all of these excessive contributions with specific transfers. During calendar years 2001 and 2002, MDSC made 22 transfers to the non-federal account from its federal account totaling \$153,872. From the available documentation, we determined that \$39,300 was timely transferred for excessive portions of contributions, (the excessive portions noted above are net of this amount.), \$71,090 was transferred for the non-federal share of offsets to operating expenditures, \$5,800 was transferred for prohibited contributions, and \$37,682 was unaccounted for. It therefore appeared that most of the \$188,295 remains in the federal accounts.

MDSC did not maintain sufficient funds to make all refunds. The book balance in MDSC's bank accounts on December 31, 2002 was negative \$99,666. See Finding 1.

At the exit conference, the Audit staff gave the MDSC's representatives a schedule of excessive contributions for individuals and PACs. The Audit staff also provided a schedule of excessive cash contributions and a schedule of transfers to the non-federal account. In response, MDSC acknowledged the receipt of the contributions.

### **Interim Audit Report Recommendation**

The Audit staff recommended that MDSC:

<sup>1</sup> The audit report on MDSC for the previous election cycle addressed a similar finding, due to MDSC's practice of not reporting contributions in excess of the limitations

- Provide evidence demonstrating that the contributions in question were not excessive. Such evidence should include copies of checks that were timely refunded or were timely transferred to its non-federal account.
- Absent such evidence, refund \$193,970 (\$188,295 + \$5,675) to the contributors and provide evidence of such refunds (copies of front and back of negotiated refund checks);
- If funds are not available to make necessary refunds, disclose those contributions requiring refunds on Schedule D (Debt and Obligations) until funds become available to make the refunds.

### **Committee Response and Audit staff's Assessment**

In response to the interim report, MDSC stated that, in some cases, when it needed to transfer funds from the non-federal account to the federal account for the non-federal share of allocable expenses, it would "net out" the non-federal portion. This meant that, instead of transferring the excessive portion to the non-federal account, it reduced the amount of the allocation transfer from the non-federal account by the amount of the excessive contributions. MDSC provided a schedule of the portions of excessive contributions that were either transferred to the non-federal account or were "netted out." According to the schedule, MDSC believes that \$157,525 of the \$188,295 excessive contributions noted above have been effectively transferred to the non-federal account.

Further, MDSC stated that it would file amended reports which would correctly disclose the gross contributions received, along with notations indicating whether the excessive contributions were transferred to the non-federal account or netted against a non-federal allocation transfer. The non-federal portion of each excessive contribution would be disclosed on Schedules B, along with a cross-reference to the associated contribution. Finally, the remaining \$30,770 excessive contributions would be disclosed on Schedules D, and, according to MDSC, would be refunded.

Although the response states that this method of handling the excessive portions of contributions was "the functional equivalent of an actual transfer," the practice does not comply with the Commission's regulations. Furthermore, upon examination of the schedule provided with the response, the Audit staff determined that there are remaining excessive contributions totaling \$38,770 (\$33,770 individual contributions and a \$5,000 political committee contribution), as well as the excessive anonymous cash contributions of \$5,675. MDSC disclosed individual excessive contributions of \$33,500 on Schedules D of its amended reports, along with the excessive anonymous cash contributions noted above.

### **Finding 3. Apparent Excessive Contribution - Staff Advances**

#### **Summary**

One MDSC employee received reimbursements for expenditures totaling \$23,647 that were not properly documented. Documentation was not available to support the date that

the advances were incurred by the employee. Absent such support, the Audit staff will consider these advances to be excessive contributions until they were reimbursed. The Audit staff recommended that MDSC demonstrate that these reimbursements were made within the proper time limitations. The response did not demonstrate that the reimbursements were made timely.

### **Legal Standard**

**Party Committee Limits.** A party committee may not receive more than a total of \$5,000 a year from any one contributor. 2 U.S.C. §441a (a)(1)(C), (2)(C) and (f); 11 CFR §§110.1(a) and (d) and 110.9(a).

**Advances by Individuals from Personal Funds.** When an individual uses his or her personal funds, including a personal credit card, to pay for goods or services used by or on behalf of a candidate or political committee, that payment is a contribution unless the payment falls under certain exceptions for travel (see below). 11 CFR §§100.7(b)(8) and 116.5(b).

**\$2,000 Travel Exemption.** An individual may voluntarily spend up to \$2,000 per calendar year for unreimbursed travel expenses on behalf of the political party without making a contribution. 11 CFR §100.7(b)(8).

**Travel Expenses Exceeding \$2,000 Exemption.** Payments for transportation expenses<sup>2</sup> that exceed the \$2,000 travel exemption (above) are considered contributions unless the committee reimburses them:

- Within 60 days<sup>3</sup>, if the payments were made on a credit card; or
- Within 30 days, if the payments were made with cash or a check. 11 CFR §116.5(b).

### **Facts and Analysis**

During calendar year 2002, one MDSC employee received 13 reimbursements for expenditures totaling \$35,406. All expenditures were classified by MDSC as travel expenditures. Documentation demonstrating that the expenditures were timely reimbursed was available for only two of these reimbursements totaling \$4,759. From the remaining \$30,647, we deducted the allowable contribution limit of \$5,000 and the allowable travel allowance of \$2,000. Absent documentation that demonstrates that the travel reimbursements were made timely, the remaining reimbursements, \$23,647, represent an apparent excessive contribution.

The matter was addressed to the MDSC representatives at the exit conference and a schedule of the reimbursements was provided.

<sup>2</sup>Including usual and normal subsistence expenses (such as food and lodging) incurred while traveling on behalf of the candidate.

<sup>3</sup> Sixty days after the closing date on the credit card billing statement where the charge first appeared

## **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that MDSC provide documentation to demonstrate that these reimbursements were made timely. In its response, MDSC acknowledged the insufficiencies in its documentation supporting the reimbursement of staff advances. Further, MDSC stated that there would never have been a time when the advancing staff member actually incurred outstanding excessive contributions amounting to \$23,647, unless no reimbursements were made until after all advances were incurred. Nonetheless, MDSC was not able to demonstrate that any of the reimbursements were made timely.

## **Finding 5. Recordkeeping for Disbursements**

### **Summary**

A sample review of operating expenditures indicated that a material amount of expenditures were not properly documented. Further, 100% reviews of coordinated expenditures and media expenditures revealed similar errors. The errors were all disbursements greater than \$200 for which there were no canceled checks, wire notices, or vendor invoices. The Audit staff recommended that MDSC obtain and provide the missing records. MDSC provided documentation for the missing media expenditures but not the coordinated expenditure or operating expenditures.

### **Legal Standard**

**Required Records for Disbursements.** For each disbursement, the treasurer of a political committee must keep records on the:

- Amount;
- Date;
- Name and address of the payee<sup>4</sup>;
- Purpose (a brief description of why the disbursement was made—see below); and
- If the disbursement was made on behalf of a candidate, the candidate's name and the office sought by the candidate.
- If the disbursement was in excess of \$200, the records must include a receipt or invoice from the payee, or a cancelled check or share draft to the payee. If the disbursement was by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill. 2 U.S.C. §432(c) and 11 CFR §§102.9(b) and 104.3(b)(3)(i).

### **Examples of Purpose.**

- **Adequate Descriptions.** Examples of adequate descriptions of "purpose" include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(3)(i)(B).
- **Inadequate Descriptions.** The following descriptions do not meet the requirement for reporting "purpose": advance, election day expenses, other expenses, expense

<sup>4</sup> The payee is usually the person providing the goods or services to the committee. In the case of travel advances, however, the payee is the person receiving the advance 11 CFR §102.9(b)(2).

reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B).

**Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 2 U.S.C. §432(d).

### **Facts and Analysis**

As previously stated, not all disbursement documentation was made available during audit fieldwork. As a result, certain testing could not be completed by the conclusion of the fieldwork. Subsequent to the exit conference, MDSC made available the majority of the documentation requested by the Audit staff at the exit conference. Our review of the documentation noted the following errors.

The Audit staff reviewed operating expenditures on a sample basis. The review indicated that a material amount of operating expenditures was not properly documented. The majority of these errors related to payroll expenditures. The only documentation available for these items was the entries on MDSC's automated reporting system. The errors were all disbursements greater than \$200 for which there were no canceled checks, wire notices, reports from the payroll service or vendor invoices.

In addition, 100% reviews of certain areas resulted in the following:

- A review of coordinated expenditures revealed that one item in the amount of \$5,552 was not adequately documented. The only documentation available for this item was the entry on the reporting system.
- A review of media expenditures identified six disbursements in the amount of \$1,576,985 that lacked adequate documentation. The disbursements were wire transfers for which the only documentation made available was the debit entries on the bank statements and the entries on the reporting system.

At the exit conference, MDSC's representatives were informed of these matters and were provided schedules, if applicable, detailing the errors. The representatives stated that they would provide additional documentation relating to these transactions.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that MDSC obtain and provide for Audit staff review, the missing documentation for disbursements. In response to the interim audit report, MDSC provided documentation for the media expenditures. The response did not address the lack of documentation for the operating expenditures or coordinated expenditure noted above.

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